

REMARKS

This patent application presently includes claims 1-25, all of which stand rejected. The claims are amended to define the applicant's invention more clearly, and all rejections are respectfully traversed.

As has been pointed out previously, the present invention makes it possible for a single originating gateway to operate with more than one communications carrier. In the prior art, as exemplified by Schuster et al., U.S. Patent No. 6,804,224 (See FIG. 1), different carriers are connected to a telephony over data network through the use of a gateway associated with the carrier. For example, Schuster shows first, second and third local exchanges each connected to a data network through a dedicated gateway 25, 35, and 45, respectively. Disadvantages associated with such a structure are disclosed specifically in the present application and are avoided by the present invention.

Fundamentally and as presently claimed, the present invention is able to overcome the shortcomings of the prior art by storing at least two indicia in association with different carriers. When a call is received, data associated with the carrier of the call will be available and will be compared to the stored indicia. If either of the indicia matches the data, the carrier of the call is identified and can then be processed appropriately for authentication, after which it is accepted in the gateway. Therefore, it becomes possible to handle calls from different carriers in a single gateway.

The Examiner admits "Schuster does not specifically teach a method of adapting an originating gateway to be associated with more than one carrier." Clearly, the Examiner appreciates that Schuster does not and could not achieve the benefit of the present invention. This is because Schuster discloses nothing more than the prior art sought to be avoided. Supposedly, Chittenden et al., published U.S. Application No. 2004/0054549, cited by the

Examiner, teaches something of relevance to the present invention. However, nothing could be further from the truth.

The Examiner makes much of FIG. 2 of Chittenden and cites specifically to paragraph [0146]. However, a careful reading of pages 8-9 of the application will reveal the disclosure relied upon by the Examiner is of no consequence. Specifically, FIG. 2 is a block diagram of the “existing forwarder infrastructure for making cargo bookings.” This is a block diagram of a business method that has absolutely nothing to do with communications, nothing to do with networks, and nothing to do with electronics. The carriers referred to are cargo carriers and, as can be appreciated from [0144] “separate cargo packages from shippers are consolidated at gateway 42 for onward carriage.” In other words, gateway 42 is a gateway for receiving physical cargo from which its onward movement is controlled. Other than the use of the words “carrier” and “gateway”, which are used in an entirely different context, this disclosure has absolutely no relevance to the present invention, and it is not seen how those skilled in the art could possibly look to this disclosure for anything of relevance to telephony over data network communications.

Initially, the undersigned must object to the Examiner's entire approach to making an obviousness rejection. In this regard, MPEP §2142 instructs that:

To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical “person of ordinary skill in the art” when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention “as a whole” would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the “differences,” conduct the search and evaluate the “subject matter as a whole” of the invention. The tendency to resort to “hindsight” based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be

reached on the basis of the facts gleaned from the prior art.
(Emphasis added)

As explained above, the Examiner's primary reference, Schuster, discloses nothing more than the known prior art. While admitting that a basic concept of the invention is not disclosed by that reference, the Examiner embarks on a gross modification of this reference on the basis of X. X, which is totally unrelated and not analogous art (discussed further below). What is the Examiner's motivation for these modifications? Where, outside the disclosure of the present patent application, does he find the slightest suggestion to make the modifications? Clearly, this is a classic example of a hindsight rejection.

Turning now to the Examiner's citation of Chittenden, MPEP §2140 1.01 (a) constructs on the importance of prior art being an analogous:

The examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "Under the correct analysis, any need or problem known in the field of endeavor at the time of the invention and addressed by the patent [or application at issue] can provide a reason for combining the elements in the manner claimed." *KSR International Co. v. Teleflex Inc.*, 550 U.S.398, 82 USPQ2d 1385, 1397 (S. Ct. 2007). Thus a reference in a field different from that of applicant's endeavor may be reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her invention as a whole. (Emphasis added)

Under the traditional two-step test set forth in *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986), to establish whether a reference is analogous prior art, it must be shown that the reference is (1) "within the field of the inventor's endeavor" or, if not, that the reference is reasonably pertinent to the particular problem with which the inventor was involved."

Assuming, for the purposes of argument, that the examiner could establish some motivation, outside the disclosure of the present patent application, for utilizing Chittenden as a

reference, he must still establish that it constitutes an analogous art. Clearly, the disclosure in Chittenden relied upon by the Examiner is outside the inventor's field of endeavor, being a method for managing the transportation of physical cargo. The present invention has nothing to do with cargo, but is involved with the problem of providing voice communication access to a data network from different voice carriers. As pointed out, the fundamental issue is that communications from different carriers must be authenticated and, in the prior art, this has been accomplished by using different gobbled it looks to interface with the network from different Chittenden carriers. The present invention allows the use of a single gobbledygook for plurality of carriers. In contrast, the disclosure of Chittenden relied upon by the Examiner has nothing to do with telecommunications, nothing to do with data networks, nothing to do even with electronics. What basis could it possibly be concluded that the disclosure of Chittenden would have commended itself to the inventor's attention and considering the present invention as a whole? Simply put, why would one skilled in the art look to a disclosure related to the control and movement of physical cargo when faced with the problem addressed by the present invention?

There can be no doubt. Chittenden is not analogous art. This is the classical example of improper, non-analogous art and any obviousness rejection based upon combining Chittenden with Schuster must fail as a matter of law. Furthermore, as demonstrated below, even if it is assumed for the purposes of argument that the Examiner has some motivation for utilizing the disclosure of Chittenden and that Chittenden is analogous art, the combination suggested by the Examiner still does not lead to the claimed subject matter. This will be demonstrated below.

Turning now to the claims, independent claim 1 includes the step of storing at least two indicia in association with different carriers, comparing this to indicia to data associated with the incoming call, and if one of the store to indicia matches the data, connecting to call utilizing a

carriers serve a corresponding to a carrier associated with the one of the indicia. In other words, on the basis of storing a plurality of indicia, and comparing them to the data related to the call, it becomes possible to associate the call with the respective carrier, so that a plurality of different carriers can be accommodated by a single gateway. Where in Chittenden is there the slightest suggestion of signal processing and network gateway, much less processing of the type described?

Indeed, there is not. Accordingly, even become binding shoe is there a Chittenden, if he were appropriate, one would not arrive at the claimed invention. Claim 1 therefore distinguishes patentability over the combination of Shuster and Chittenden and should be allowed. Claims 2-7 depend from claim 1 and should be allowed based upon their dependence from an allowable claim.

Independent claim 8 incorporates basically the same features as claim 1, but in the form of apparatus. It is therefore allowable over the combination of Shuster and Chittenden for the same reasons as claim 1. Claims 9-14 depend 8 and are allowable based upon their dependence from an allowable claim.

Likes claims one and eight, independent claim 15 includes the storage of indicia associated with different carriers, comparison of cold related data with the indicia and selection of the server for authentication based upon a successful comparison between the indicia in the data. For the same reasons as claims 1 and 8, claim 15 should be allowed.

Independent claim 16 includes the same steps as claim 1 of storing indicia, comparing the indicia to call the related data, and connecting to a server associated with a carrier based upon the comparison. Claim 16 should now be allowed for the same reasons as claim 1. Claims 17-20 depend from claim 16 and should be allowed owing to their dependence from an allowable claim.

It should be appreciated that independent claims 21 and 23 incorporate the same comparison and selection features based upon the comparison and should therefore be allowed for the same reasons as the other independent claims. Claim 22 depends from claim 21 and claims 24-25 depend from claim 23. Please claims should be allowed owing to their dependence from an allowable claim.

Conclusion:

The Examiner's entire approach to making the obviousness rejections is inappropriate, in that it employs hindsight based upon the disclosure of the present patent application and, otherwise, has no motivation for combining the references. Furthermore, the Chittenden reference is decidedly not analogous prior art. Even if these defects in formulating the rejections are overlooked, the combination still does not teach or even remotely suggests the subject matter of the claims.

Applicants respectfully contend that the instant application is in condition for allowance, and thus request that this application be passed to issue. All fees believed to be due at this time have been paid. However, the Examiner is authorized to deduct any deficiency in fees believed due from, or to credit any overpayment to, our Deposit Account No. 50-4711.

Dated: December 31, 2008

Respectfully submitted,

By: s/Joseph B. Lerch/
Joseph B. Lerch
Registration No.: 26,936
KAPLAN GILMAN & PERGAMENT LLP
1480 Route 9 North, Suite 204
Woodbridge, New Jersey 07095
Telephone 732-636-4500
Attorneys for Applicant